1441.

SUPREME COURT OF THE UNITED STATES.

No. ~~115~~ 71.

THE UNITED STATES, APPELLANT,

VERSUS

112 CASKS OF SUGAR—NATHAN GOODALE, CLAIMANT.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

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EASTERN DISTRICT OF LOUISIANA, *ss.*

Be it remembered, that, on the 19th day of September, in the year of our Lord one thousand eight hundred and thirty-one, into the district court of the United States for the eastern district of Louisiana, came the United States of America, by their attorney for the said district, and filed their libel in words and figures as follows, to wit:

To the honorable Samuel H. Harper, Judge of the District Court of the United States, for the Eastern District of Louisiana.

The libel of the United States of America, by John Slidell, their attorney for said district, gives the court to understand and be informed, that, since the fifteenth day of September, 1831, and before the filing of this libel, to wit, the 19th day of September, 1831, Martin Gordon, collector of the customs for the district of Mississippi, did cause to be seized, on waters navigable from the sea by vessels of more than ten tons burden, to wit, at the port of New Orleans, on the river Mississippi, in the district of Mississippi aforesaid, and within the jurisdiction of this court, 112 casks, containing sugar: for this, that the schooner Rising States, having arrived at the port of New Orleans aforesaid, having on board goods, wares, and merchandise, consigned to Nathan Goodale, of New Orleans, the said goods, wares, and merchandise, were, by him entered at the custom-house of the said port of New Orleans, and an invoice thereof presented to Martin Gordon, collector of the customs for the district of Mississippi; who, thereupon, suspecting fraud in the said invoice and entry, caused said casks to be opened and examined in the presence of several respectable merchants, according to the provisions of the revenue laws of the United States. That, upon such opening and examination of said casks, the same were found to differ in their contents from the entry aforesaid, the same having been entered as containing sirup, when, in fact, they contained sugar in a state of partial solution in water; and their contents were subject, as such, to the payment of the specific rates of duty of three cents and four cents per pound, contrary to the form of the statute in such case made and provided. And the attorney aforesaid, on the behalf aforesaid, alleges that, by reason of the premises, the said goods, wares, and merchandise, have become forfeited to the United States. He prays that the proper admiralty process may issue against the said goods, and that, after monition, and other due proceedings had, the same may be decreed to be forfeited, condemned, and sold, and dis-

tribution made thereof according to law; and that all other and further relief may be given, which to justice and equity may appertain.

JOHN SLIDELL, *Dist. Atto.*

Warrant of Seizure.

The President of the United States of America to the Marshal of the Eastern District of Louisiana, or to his lawful deputy, *Greeting:*

You are hereby commanded forthwith to seize, and into your possession take, 112 casks, containing sugar, now libelled by the United States in the district court of the United States for the eastern district of Louisiana; and that you do cite and admonish the owner or owners, and all and every other person or persons having, or pretending to have, any right, title, or interest in *to* to the same, to be and appear before the district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the 5th day of October, 1831, to show cause if any they have or can, why and said 112 casks, containing sugar, should not be condemned as forfeited, sold agreeably to the prayer of the libellants, and how you shall have executed this warrant, that you make return according to law. Witness the honorable Samuel H. Harper, judge of the said court, this 19th day of September, A. D. 1831, and 56th year of the independence of the United States.

L. M. DAVIDSON, *Dep. Clk.*

Marshal's Return.

Received September 19th, 1831. Seized and took possession of 112 casks sugar in the hands of M. Gordon, collector; took inventory, and published monition on the 21st, and returned this warrant into court

L. C. BACON, *D'y Marshal.*

Claim of N. Goodale.

To the hon. S. H. Harper, judge of the district court of the United States for the eastern district of Louisiana: The petition of N. Goodale, residing in the city of New Orleans, respectfully represents: that he is the owner of 112 one hundred and twelve casks of sirup, of the value of four thousand five hundred and fifty dollars and upwards, seized on board the schooner Rising States, and libelled in this court as 112 casks containing sugar, and forfeited to the United States. Your petitioner prays that this his claim to said merchandise may be admitted, and the same restored to him, denying that the contents of said casks differ from the entry, or that they contain sugar, or that there has been any fraud, or that any forfeiture is incurred.

Claim filed 20th September, 1813.

GEO. STRAWBRIDGE, *for Claimant.*

N. Goodale, being sworn, deposes that the facts set forth in the above petition are true.

N. GOODALE.

Sworn to before me, this 20th Sep., 1831.

S. M. DAVIDSON, *Dy. Clk.*

Order of Court

SPECIAL COURT,

TUESDAY, *September* 20, 1831.

Present, Hon. SAM'L H. HARPER.

The UNITED STATES, *vs.* 112 CASKS SUGAR. } No. 3,083

On motion of George Strawbridge, proctor for N. Goodale, claimant in this case, it is ordered that the said casks of sugar be restored to the claimant, on his entering into bond with Whitall, Jaudon, & Co., and A. Fisk, Watt, & Co., as securities, in double the appraised value thereof; and, to that effect, that Simeon Cuculler, David Urquhart, and W. W. Montgomery, be appointed appraisers of said sugar, and that they make report without delay.

Report of Appraisers.

We, the subscribers, being appointed to appraise the value of 112 hhds. sugar, in a liquid state, imported by N. Goodale in the schooner Rising States, after examining the said sugars, and obtaining all the information which we could get relating to the value, we are of opinion that the value is 60 cents per gallon in this market.

NEW ORLEANS, 27*th Sep.*, 1831.

DAVID URQUHART,
M. S. CUCULLER,
W. W. MONTGOMERY.

Sworn to before me, this 27th Sept., 1831.

L. M. DAVIDSON, *D. C.*

Bond.

Know all men by these presents, that we, Nathan Goodale, as principal, and Whitall, Jaudon, & Co , and A. Fisk, Watt, & Co., are held and firmly bound unto the United States of America in the just and full sum of thirteen thousand seven hundred and thirty-two $\frac{80}{100}$ dollars; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 27th day of September, 1831.

The condition of the above obligation is such, that, whereas 112 casks of sugar have been libelled by the United States aforesaid, and whereas Nathan Goodale has duly filed in the district court of the United States for the eastern district of Louisiana his claim for the said 112 casks, containing sugar. Now, if the said Nathan Goodale, Whitall, Jaudon, & Co., and A. Fisk, Watt, & Co., shall well and truly pay, or cause to be paid to the United States, or to their certain attorney, the sum of six thousand eight hundred and sixty-six $\frac{40}{100}$ dollars, being the appraised value of said 112 casks, containing sugar, in case the same shall be adjudged by the court to be forfeited to the said United States upon the trial of the same, together with the costs of suit, then this obligation to be void, or else to remain in full force and virtue.

N. GOODALE, [L. S.]
WHITALL, JAUDON, & Co, [L. S.]
A. FISK, WATT, & Co. [L. S.]

Signed, sealed, and delivered, in the presence of

L. M. DAVIDSON, *Dy. Clk.*

Order of Court.

SPECIAL COURT.

THURSDAY, 20*th October*, 1831.

Present, Hon. S. H. HARPER.

The UNITED STATES, *vs.* 112 CASKS OF SUGAR. } No. 3,083.

On motion of the district attorney, it is ordered that the claimants show cause, on Thursday, 20th inst., why he shall not be allowed to amend the libel in this case by filing a supplemental or amended libel, which shall be taken and considered as a part of the original libel. Whereupon, the claimant, by his attorney, George Strawbridge, appeared, accepted service of said rule, and opposed the same; when, after hearing the arguments, it was ordered by the court that said rule be made absolute, and that the district attorney have leave to file a supplemental libel.

Supplemental Libel.

The UNITED STATES, *vs.* 112 CASKS OF SUGAR. } No. 3,083.

Filed 20*th October*, 1831.

The supplemental or amended libel of the United States, by John Slidell, their attorney for the eastern district of Louisiana, alleges and propounds that the goods, wares, and merchandise, seized in this case, as stated in the original libel, having been imported into the United States, to wit, into the district of Mississippi, and being subject to the payment of duties of importation to the United States, were consigned to Nathan Goodale, of New Orleans, were by him entered at the custom-house of the port of New Orleans, and an invoice thereof was by him presented to Martin Gordon, collector of the customs for the district of Mississippi aforesaid, which invoice represented the said casks or packages to contain sirup; who, thereupon, caused the said packages or casks to *to* be examined, when it appeared that the same contained sugar in a state of solution in water, and that their contents, as such, were subject to the payment of specific duties of three cents and four cents per pound, and that all the said casks or packages containing goods, wares, and merchandise not described in the said invoice, so as aforesaid presented by said Goodale. That the said invoice, so as aforesaid presented by said Goodale to the collector of the customs for the district of Mississippi aforesaid, was made up with the intent, by a false designation of said goods, wares, and merchandise, to evade and defraud the revenue of the United State, contrary to the form of the statute in such case made and provided, whereby the said goods, wares, and merchandise, have become forfeited to the United States.

JOHN SLIDELL, *Dist. Atto.*

Order of Court.

SPECIAL COURT,

THURSDAY, 20*th October*, 1831.

Present—Hon. SAM'L H. HARPER.

THE UNITED STATES, vs. 112 CASKS OF SUGAR. } No. 3,083.

On motion of the claimant's proctor, and by consent of the district attorney, it is ordered that the commission issued in this case to H. G. Otis, esquire, mayor of Boston, be amended by striking out the works "mayor of the city of Boston," and that the said H. G. Otis, esquire, be authorized to execute the same, whether in office or not.

Order of Court.

SPECIAL COURT,

NEW ORLEANS, *September 15th*, 1832.

Present—Hon. SAM'L H. HARPER.

THE UNITED STATES, vs. 112 CASKS OF SUGAR. } No. 3,083.

On motion of the district attorney, ordered that this cause be set for trial for Friday next, at 10 o'clock A. M., and that the opposite party have notice of the same.

Agreement of Counsel.

THE UNITED STATES, vs. 112 CASKS OF SUGAR. } *U. S. D. Ct., E. D. of La.* No. 3,083.

And now, viz. on the 29th November, upon the trial of this case, and case No. 3,085 and 3,086, it is agreed that only the first of these causes be tried, and that the decision of this upon its merits shall decide the others, which, until such final decision, the other causes above enumerated shall remain *in statu quo*, the testimony taken in the present case being always applicable to the other cases.

GEO. STRAWBRIDGE, *for Clmt.*
J. SLIDELL, *Dist. Atto.*

Order of Court.

SPECIAL COURT,

THURSDAY, *November 29th*, 1832.

Present—Hon. SAM'L H. HARPER.

THE UNITED STATES, vs. 112 CASKS OF SUGAR. } No. 3,083.

This being the day agreed upon by the parties for the trial of this cause, they appeared before the court. The trial was commenced, and, after some progress in the same, its further consideration was postponed until to-morrow, at 10 o'clock A. M.

FRIDAY, 30*th November*, 1832.

The court met pursuant to adjournment.
Present—Hon. SAM'L H. HARPER.

THE UNITED STATES, vs. 112 CASKS OF SUGAR. } No. 3,083.

This cause came on again before the court, and the examination proceeded until considerable progress had been made in the same, when the further consideration thereof was postponed until to-morrow, at 10 o'clock A. M.

Order of Court.

SATURDAY, 1*st December*, 1832.

The court met pursuant to adjournment.

Present—Hon. SAM'L H. HARPER.

THE UNITED STATES, vs. 112 CASKS OF SUGAR. } No. 3,083.

This cause came on again for examination before the court, and after some progress, the further consideration of the same was postponed until Monday next, at 11 o'clock A. M.

SPECIAL COURT,

MONDAY, *December 3d*, 1832.

The court met pursuant to adjournment.

Present—Hon. SAM'L H. HARPER.

THE UNITED STATES, vs. 112 CASKS OF SUGAR. } No. 3,083.

This cause again came on before the court, and, after the conclusion of the argument of counsel, the case was submitted to the court for decision.

Statement filed by consent, 3d December, 1832.

On the trial of this cause, the district attorney offered in evidence a report of W. W. Montgomery, and sixteen other persons, merchants, who had been called upon by the collector of the port of New Orleans to examine the cargo of the schooner Rising States, to report thereon. The claimant objected to the admission of *of* said report as evidence, because the persons by whom it was made had not been sworn, and no opportunity had been offered for their cross-examination, but the court refused to permit the said report to be read in evidence, stating that it would be admissible on an examination into the fact of probable cause of seizure by the collector, but not as evidence to support the libel. The court refused also to permit said document to be filed as evidence, so as to make a part of the record in case of an appeal.

DISTRICT OF MISSISSIPPI, *Port of New Orleans:*

Consignee, importer, or agent's oath No. 1.

I, Nathan Goodale, do solemnly and truly swear that the invoice and bill of lading now presented by me to the collector of the district of Mississippi, are the true and only invoice and bill of lading by me received, of all the goods, wares, and merchandise, imported in the schooner Rising States,

whereof J. Sergeant is master, from Matanzas, for account of any person whosoever, for whom I am authorized to enter the same, that said invoice and bill of lading are in the state in which they were actually received by me; and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandize; that the entry now delivered to the collector contains a just and true account of said goods, wares, and merchandize, according to the invoice and bill of lading; that nothing has been on my part, nor to my knowledge, on the part of any other person concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandize; and that, if at any time hereafter, I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandize, or receive any other invoice of the same, I will immediately make the same known to the collector of this district; and I do *further solemnly* and truly *swear*, that to the best of my knowledge and and belief ———— of ———— owner ———— of the goods, wares, and merchandize mentioned in the annexed entry; that the invoice now produced by me exhibits the ———— of the goods, wares, and merchandize: all of the charge thereon, and no other different discount, bounty, or drawback, but such as has been actually allowed on the same. So help me God.

N. GOODALE.

Sworn to, this 17th September, 1831, before me.

C. HECTOR.

Entry of merchandize imported by N. Goodale in the schooner Rising States, whereof J. Sergeant is master, from Matanzas, on the day of September, 1831:

Package, or contents.	
One hundred and twelve casks syrup.	

Admission of Claimant.

THE UNITED STATES, *vs.* 112 Casks Sugar. } No. 3,083.

In this case it is admitted that N. Goodale, the claimant, has an establishment at Matanzas, in the island of Cuba, erected for the purpose of preparing sugar, and reducing it to the state in which the cargo, imported in the Rising States, was shipped from Matanzas; that, for this purpose, clayed sugars, both white and brown, are purchased by him at or near Matanzas, and are there reduced to a liquid state, by boiling with water; that the sugar thus dissolved or prepared, was not intended to be sold at Matanzas, nor has it been offered for sale, but has been so prepared, for the purpose of shipment to New Orleans, to be made into refined sugar at the establish-

ment or refinery used and conducted by said Goodale. New Orleans, October 31, 1831.

GEO. STRAWBRIDGE,
for Complainant.
JNO. SLIDELL,
District Attorney.

THE UNITED STATES,
vs.
112 CASKS SUGAR. } No. 3,083. Filed 3d December, 1832.

It is admitted that, previous to the seizure of the merchandise in this case, the collector of the customs did cause the same to be examined, as required by the 67th sec. act 2d March, 1799, cap. 128, and of the 10th sec. of the act of 28th May, 1830, cap. 147.

GEO. STRAWBRIGE,
for Claimant.

Agreement of Counsel filed 20th September, 1831.

UNITED STATES,
vs.
112 CASKS SUGAR. } No. 3,083.
and } United States' District Court.
UNITED STATES,
vs.
138 CASKS SUGAR. } No. 3,085.

It is agreed that, in these cases, three casks of each cargo shall be deposited in the custom-house stores, and shall be considered, on the trial of these causes, as fair samples of the entire parcels.

J. SLIDELL,
District Attorney.
GEO. STRAWBRIDGE,
for Claimant.

THE UNITED STATES,
vs.
112 CASKS OF SUGAR, N. Goodale, Claimant. } No. 3083.

Francisco Oriol, a witness upon the part of the United States sworn, says he is a chemist; he was employed to analyze 10 gallons of the article libelled in this case. The 10 gallons weighed 111 pounds; that, by the simple process of evaporation by boiling, he obtained from it 74 lbs. brown sugar, 3 lbs. 4 oz. molasses, or sugar not susceptible of being crystalized, 5 lbs. 8 oz. dregs, 28 lbs. 4 oz. lost in the process of evaporation. He considers the 28 lbs. 4 oz. as representing the water in which the sugar was dissolved, and that the balance, weight 82 lbs. 16 oz. was weight of sugar originally dissolved in water. This process was performed by him in 5 or 6 hours; that it was done in a hurry, and carelessly, or the product would have been much more. He understands natural sirup to mean water poured upon sugar, and boiled to that consistency which prevents crystalization; and, to produce this effect, it is necessary to intrroduce other agents, such whites of eggs, &c., and that the taste of sugar is wholly taken away; that the article seized in this case had not been much boiled; that sugar, in its natural state, had fallen to the

bottom; that there had been no attempt to purify it—it was composed of nothing but sugar and water; that, upon the exposure of this article to the air, it becomes sugar with particles of candy among it; that the nat. sirup, mentioned above, could not, by any process, be converted into this article; that it would become refined sugar or sugar candy, and not such as he produced from the sample; that he considers this nothing more than sugar dissolved in water, and not sirup.

Cross-examined.

Says he is a chemist and apothecary in this city; that he was educated at Barcelona; he is a Spaniard; he has been licensed here as an apothecary by the medical board; he has exercised his profession, as apothecary, in Spain, at Vera Cruz, and New Orleans. He exercised his profession in Spain 3 years, from 1821 to 1824; from Spain he went to Havana, and was employed as an apothecary in an apothecary's shop eight months. He arrived in Havana April, 1825, and left for Vera Cruz February, 1826, and arrived in New Orleans 1827: he is thirty-three years of age. At Barcelona, he kept an apothecary's shop; that he kept no more sugar than was sufficient for the use of the shop; they kept no sirup in the shop. While he was in Havana he made no sirup: that, as apothecary, he is not obliged to make sirup, but it is necessary, and he is qualified to teach the manner in which it should be made. He has never been engaged in commerce of sugar in any part of the world, unless for the quantity sufficient for the use of his apothecary shop: he has kept an apothecary shop in New Orleans since end of 1827. Natural sirup exposed to the air ferments, and a greater degree of heat will cause it to crystalize. Of the article libelled in this case, some would form into sugar candy, but the rest would form into granulated sugar. Sugar in solution, as he described this article to be, would not ferment unless the degree of heat was great: upon exposure to the air, it would evaporate and become a solid mass. When he saw this article, it could not ferment, because it was exposed to the common atmosphere in December, and he tried no experiment with a view to create fermentation. He cannot give a decided opinion whether or not this article would ferment upon exposure to common atmosphere, but thinks it would, because a solid mass of sugar; that, while importing this article from Havana, he thinks that solid particles would create He has analyzed no part of this article than 10 gallons sent to him by the collector; he found no sugar undissolved; he never saw the cask from which the 10 gallons were taken, and never saw any of the casks, only when passing on the Levee, when a custom-house officer called to him, and showed him some of the sugar he said he had taken from the bottom of a cask, and said it was the sugar they had seized. It is admitted by the parties that the 10 gallons analyzed by Mr. Oriol was a fair sample of the article libelled.

F. Lavergne, a witness upon the part of the United States, sworn: says he understands sirup to mean a refined article, made by distillation or boiling. Sugar dissolved in water does not mean sirup, as generally called or known. If sugar is boiled in water he would call it sirup. He examined the article libelled at the time of the seizure, and did not think it sirup, as generally understood. He never saw the article before; thinks it approaches nearer to sirup than sugar. He is no merchant, and engaged in no kind of commerce. He would have purchased it as sirup, and not sugar.

Ames Cueuller, a witness upon the part of the United States, sworn: says he has been for many years merchant in New Orleans, and has dealt largely in sugar. Sugar dissolved in water is not considered sirup, in the sense as generally used in common parlance, as an article of commerce. He does not consider sugar dissolved in water sirup: it must be boiled and clarified to mean sirup in common parlance, such as is used in confectionaries and coffee-houses.

Cross-examined.

Being asked what he would call a liquid substance, composed of sugar boiled in water?

Answered, he does not know, unless he could see the article.

If an article in a liquid shape, composed of sugar boiled in water, was offered to him, would he call it or buy it for sugar?

Answers, he would like to see the article before giving opinion.

Asked if he had ever seen liquid sugar?

Answers, he has; he saw it in the casks libelled in this case.

Asked, is sugar ever in a liquid state in a general or commercial signification of the term?

Answers, that it is a dry article in the general use of the term.

Asked, did you ever know such an article as this libelled, sold for sugar?

Answers, he did not know it to be sold either as sugar or sirup; it is a new article; he never saw it before.

Asked, what do you call this article?

Answered, sugar dissolved in water and boiled to a certain degree of heat.

Asked, what do you call sirup?

Answers, it is a certain portion of water and sugar boiled together, and clarified. Says he was one of the persons called, by the collector, to inspect the article libelled, and knows it. That, if he had given orders to a broker to buy him 100 hogsheads sugar, and he had bought such an article as this libelled, he should not have considered his orders or directions as having been complied with. His father has a large sugar estate in Louisiana—says he has examined the article libelled in this case, and does not consider it a sirup, in the usual and general sense of the term.

W. W. Montgomery, a witness upon the part of the United States, sworn, says he has been, for many years, a merchant extensively engaged in New Orleans, and has dealt largely in sugar. He has examined the article libelled in this case; he does not consider it sirup as the term is generally used and understood: he has never known such article called sirup before.

Cross-examined.

He has seen the article, and was one of those that examined it. He never should have considered the article as sugar; that, if it had been consigned to him, he would have sold it for sirup. It is certainly not sugar, but sugar and water: he is deeply interested in sugar planting; he has been in the habit of using sirup, such as is sold by confectionary, in his family: he has known it to ferment, casks to fly, bottles to break, and candy to form at the bottom.

FRIDAY, 30*th November*, 1832.

Examination of witnesses resumed.

J. B. Jeanbait, a witness upon the part of the United States, sworn: says he was the gauger in the employment of the United States, and examined

the article seized in this case. He found sugar settled in the bottom of all the said casks; he found sugar and sugar candy in the bottom of the casks examined.

Cross-examined.

Question. To what extent was the deposit made in *in* hogsheads?
Answer. Three or four inches, and others more or less.
Q. Was this deposite of pure sugar, or was it candied?
The deposite was of lumps of candied sugar, and granulated sugar, mixed.
Q. Are you acquainted with the process of making sirup?
A. No.
Q. Were you ever engaged in the commerce of buying and selling of sugar and sirup?
A. No.

Deponent says, that, on the examination of the whole of the casks of sugar or sirup seized, when they landed, proved to be of the same quality as those opened to day.

Sheldon S. Clarke, an appraiser of the custom-house, being sworn for the United States, deposes that has examined two casks of the sugar or sirup reserved as specimens of the cargoes seized. One appeared to be tight; the other with the bung out. In the cask that had the bung in, he found very little deposite; in the other there was 25 or 30 pounds of deposite, which has the appearance of sugar; but, on handling it, it appeared to be hard and more like candy. Deponent examined the casks this morning: says that the hogsheads do not contain what the deponent has been accustomed to hear called by the name of sirup: it is darker in color, and thicker than sirup. He has been an appraiser near 4 years: says the casks probably contain about 120 gallons. By the gauger's return, it appears they contain about 110 gallons.

Cross-examined.

Question. Are you acquainted with the process of making sirup?
Answer. I am not.
Q. Were you ever engaged in buying and selling sugars?
A. No.
Q. Had you seen the article libelled in this case on the Levee, would you have called it sugar?
A. No.
Q. If a cask containing the article libelled in this case was exhibited to you, what would you call it?
A. I should examine it before I gave it any name.
Q. If you were told that it was sugar boiled in water, what would you call it?
A. If well boiled, I should call it sirup. It would be sirup, if boiled so much as to destroy the grain entirely. When the article libelled is exposed in an open vessel to the air, the water evaporates, and it becomes a solid mass of candy mixed with granulated sugar: there appeared to be more sugar about it than candy when exposed to the sun.

John George, a witness for claimants, being sworn, says he has been a sugar refiner about 20 years; his father was a sugar refiner; his brothers and himself are engaged in sugar refining in London at present. His house has

invented some of the greatest improvements in refining sugar; is now engaged in an extensive sugar refinery in this country; has seen the casks opened as specimens this morning, and their contents. Speaking as a merchant and sugar refiner, their contents are sirup; it cannot be called by any other name; that the substance deposited in the casks would be called sugar and not candy, because the crystals are so small; it is usual with all sirup to deposite a crystal; the deposites in the bottom of the casks are what would be called settlings of sirup in a refinery; sugar may be reduced to sirup by boiling it to a certain extent; after being boiled, if left in the air, the grain will be restored; that boiling destroys the grain of the sugar for the time being, but it always possesses the quality of being restored. The settlings from sirup are not the same as in sugar; it differs in the crystals being larger. Sugar cannot be well dissolved in cold water; a glassful of cold water would not dissolve one-third the quantity of sugar. The fact of the crystalization in the deposite in the casks being so large, is a proof of the complete solution of the sugar in the water, and the change of its nature, and the formation of a new grain. Candy is sugar; the only difference in them is in the difference of the largeness of the grain; the forms of the crystals being the same in candy as in sugar. The article exhibited in court as sugar or sirup has fermented: natural sirup will ferment and form crystals, if kept long enough; this sirup is the same as that sold in hotels, except that it is not strained or clarified: dissolving sugar in water injures the sugar by weakening it. He would not, as a matter of course, put water in sugar; he should keep all the water from it; it would injure it also for refining: to reduce the present article to sugar, and restore it to its original character, would require the same process as to make sugar from the cane juice: the basis of all sirup is sugar and water boiled together: there are different kinds of sirups made by mixing sugar and water: they are produced by putting into the sugar the different articles from which the sirup takes its name, such as orange sirup, lemon sirup, &c , &c. Being shown a bottle of cane juice boiled, says there is no material difference between them, except that the quality of one is better than that of the other.

Cross-examined.

There would be no other motive in a sugar refiner buying sugar in Cuba, and reducing it to sirup to import to this place, except to avoid the difference in duties, and, perhaps, a saving of freight. In the process of refining, sugar must necessarily be reduced to a liquid state: no matter how much sugar is dissolved, or by what process it may be dissolved, still, if the dissolution is complete, he would call it sirup.

J. W. Zacharie, a witness upon the part of the claimant, sworn, says he has been a merchant in this place for 15 years; has dealt in sugar, and has imported some boxes of sirup for his friends: he has never imported more than 10 or 15 boxes of a dozen bottles each: he entered it at the custom-house as sirup, and paid a duty of fifteen per cent. ad valorem. Has seen the article seized, and would call it sirup; he should not think of calling it or offering it as sugar for sale, or for entering it at the custom-house as such. The sirup imported by him was mixed with some substances other than sugar.

N. Clarke, jr., a witness upon the part of the claimant, sworn, says he has been engaged in commerce here and at Havana for a number of years;

has dealt considerably in sugar, but not much in sirups: he imported 10 or 20 hhds. sirup for Mr. Shepherd, and has imported several boxes of sirup for his friends, which he entered at the custom-house as sirup: when imported in an American vessel, he paid 15 per cent. ad valorem; when in a Spanish vessel, 10 per cent. additional: has seen the article seized; saw it on the vessel when she arrived; says, in the common trading phrase, he should call it sirup: it is called sirup in Havana. He says he knows that the sirup imported in bottles will ferment, and also form a crystal, especially when exposed to the air.

Cross-examined.

What is called sugar and water, would be merely sugar dissolved in water. Does not know how sirup imported for Mr. Shepherd was entered at the custom-house; it was after the seizure of Mr. Goodale's cargoes, but was ordered before: thinks it was imported by the Wallidar; he declined entering it at the custom-house; presumes it was entered by Mr Shepherd. He thinks the sirup imported by him in bottles cost $2 or $2 50 per dozen, containing, as he supposes, about 2 to 2½ gallons sirup; it was all made out of the first quality white Havana sugar, and was mixed with some other substance to flavor it. He has never known an article of the kind seized, imported before that of Mr. Goodale, and that imported by him for Mr. Shepherd. Has never known it offered for sale here as an article of commerce.

Daniel Yard, sworn for claimant, says, he is now, and has been for several years, a grocer in the city of New Orleans. He would call the article libelled in this case sirup, and would never think of buying of selling it as sugar.

Cross-examined.

He never has seen any thing like this article in commerce: he has had and seen sirup in bottles, and it made similar deposite, to that made by this article. He has known the same sirup to ferment and burst the bottles.

W. W. Barney, a witness upon the part of the claimant, sworn, says he has exercised the calling of a merchant for several years. He has dealt in sugar; bought and sold sugar. He has seen the article libelled in this case; he would call it, in the common language of trade, sirup. He has seen molasses imported into the United States contain large quantity of sugar in deposite at least one-third; it was entered on his manifest, and bills of laden, as molasses, and, in one instance, it paid the duty of molasses. It frequently happens that the molasses of Louisiana deposites sugar.

Cross-examined.

He paid no more for molasses containing one-third sugar than other good molasses. He never has known any article of the description libelled, sold in New Orleans or elsewhere.

James Colles, a witness upon the part of the claimant, sworn, says he has been for many years a merchant extensively engaged in sugars. He would call the article libelled in this case sirup or molasses, or sirup not clarified: he would never think of buying and selling it as sugar.

Cross-examined.

He has never seen any article like this exhibited sold.

W. E. Leverich, a witness upon the part of the claimant, sworn, says he has been, for many years, merchant, and extensively engaged in the commerce of sugar. He would call the article libelled in this case sirup or molasses. He would never think of designating, buying, or selling it as sugar.

Cross examined.

He has never known an article of the kind sold: there is an article in this country, upon sugar plantations, taken from the coolers, which resembles the article libelled in this case.

Beverley Chew, a witness upon the part of the claimant, sworn, says, he was, for many years, collector of this port; thinks that, at various times, there were small quantities of sirup imported, but none of any importance; supposes they were entered as sirup, but is not confident; thinks it was entered, and paid an ad valorem duty. Being shown a sample of the article seized, said he would call it a liquid, something resembling sirup; he would not call it sugar; but he is not sufficiently conversant with the article to be able to call it sirup, or by any other definite name.

Cross-examined.

Says he does not remember any large importation. Sirup was frequently imported in bottles, and sometimes in goards, almost always as presents. Does not recollect of any being in larger vessels than demijohns. Does not remember that the article seized in this case was made an article of commerce during his continuance in office, though it might have been: he cannot be positive upon the subject.

A. H. Inskeep, *Inskeev*, sworn for claimant, says he has been an appraiser in the custom-house for several years. Does not recollect that, during the time he was in the custom-house, any large quantity of sirup was imported; has been a grocer for years; should call the article seized sirup; should not have purchased the article for sugar; does not understand the process of making sugar. He understood the process of making sirup is by boiling sugar and water; has never heard of sugar in solution, or sugar and water as an article of trade: he does not know how the sirups imported while he was in the custom-house was entered: thinks they were not of sufficient importance to merit an entry.

Cross-examined.

He has never known an article like this seized, to be an article of trade or commerce: he has purchased from carts in the streets common sirup something resembling this.

R. M. Willman, a witness upon the part of claimant, sworn: says he was, for a number of years, appraiser in the custom-house: he knows that sirup was then imported in small quantities, of not more than a case of 12 bottles at a time. In most cases articles of that nature were sent to the custom-house to be examined and value set on them; he has also done business as a grocer; he would call the article seized sirup; does not think he could call it sugar.

Cross-examined.

He presumes the sirup, which was sent to the custom-house, was entered, as a permit was obtained for it, but does not know whether it was entered as sirup or not.

Samuel J. Peters, a witness upon the part of the claimant, sworn: says he has been, for many years, extensively engaged in buying and selling sugar and molasses; being shown the article seized, says he should call it natural sirup; says that sirup is made of sugar and water, and is called after the names of the different flavors put in it. This, however, is natural sirup, not having been flavored: should not consider or buy this article for sugar.

Cross-examined.

Has never known an article of this quality offered for sale here; the sirup sold here is usually clarified, but that does not make it more or less sirup; if he purchased this article at all, he should purchase it as sirup; the article is nothing but sirup; he should call it an inferior quality sirup. If he was dealing in it as an article of commerce, as he would in selling good or inferior articles of any other kind.

John Slidell says that, at the time of the several parcels invoiced and entered by the claimant as containing sirup, and of the entries of which have been offered in evidence by him, were imported, he was consulted, in the capacity of district attorney, by Martin Gordon, the collector of the customs at New Orleans, on the subject. Mr. Gordon, at the time, supposed that the article entered by the claimant as sirup, was the expressed juice of the cane, boiled to a certain consistency, and was entirely ignorant of the manner in which it had been prepared by the dissolution of sugar in water. That, under the supposed state of facts, he told the collector that, although he considered the importation as an evasion of the law, and in violation of its spirit, he did not think it could be remedied in any other way than by legislative action. That a libel for forfeiture could not be sustained. The real mode of preparation having been, in the meantime, ascertained, the collector again consulted him, when he advised the seizure of the cargo, now libelled, and the seizure was accordingly made.

Entry made by Mr. Shepherd at Custom-house.

No. 2—Owner's oath in case where goods, wares, and merchandise, have been actually purchased.

I, James H Shepherd, do solemnly and truly swear that the entry now delivered by me to the collector of the district of Mississippi, contains a just and true account of all the goods, wares, and merchandise, imported by, or consigned to, R. D. Shepherd and Co., in the brig Valedor, whereof D. Fitch is master, from Havana; that the invoice which I now produce contains a just and faithful account of the actual costs of said goods, wares, and merchandise, of all charges thereon, including charges and purchasing carriages, bleaching, dying, dressing, finishing, putting up, and packing, and no other discount, drawback, or bounty, but such as has been actually allowed on the same; that I do not know or believe in the existence of any *any* invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I do further and truly solemnly swear that I have not, in the said entry or invoice, concealed or suppressed any thing whereby the United States may be defrauded of any part of the *of the* duty lawfully due on said goods, wares, and merchandise, and that, if any time hereafter, I discover any error in the said invoice, or in the account now produced of the said goods, wares, and mer-

chandise, or receive any other invoice, I will immediately make the same known to the collector of this district. Sworn to this 24th day of October, 1831.

J. H. SHEPHERD.

H. F. SMITH, *D'y Collector.*

Entry of merchandise imported by R. D. Shepherd and Co., in the brig Validor, whereof Fitch is master, from Havana, on the 24th of October, 1831.

Packages and contents.	
17 tierces sugar, in solution, measuring 1168 galls., equal to *m* per invoice.	Sugar white, 9712 lbs, *a* 4 cents, $388 48.

THE UNITED STATES, vs. 112 CASKS OF SUGAR. } *Filed 3d December,* 1832.

It is agreed by the parties, that the entries made of an article similar to the one seized by N. Goodale, and also an entry of an article of the same kind made by Mr. Shepherd, be sent up, in case of an appeal, in the transcript, as a part of the testimony in this case.

NEW ORLEANS, *Dec.* 3*d,* 1832.

Agreeably to the above agreement of parties, the entry made by Mr. Shepherd was brought to this office, and forms a part of this transcript, (see page 35.) The entries made of an article similar to that seized in this case, imported by Mr. Goodale, and above referred to, was considered, and was the testimony upon the part of the claimant, which will not be found in this transcript, because of the inability of the clerk of the eastern district of Louisiana to procure the same, although the claimant was personally notified of the agreement—which notice was as follows:

CLERK'S OFFICE, U. S. DIST. COURT,

New Orleans, 27th December, 1832.

SIR: On the trial of the cause of the United States vs. 112 casks of sugar, (of which you are claimant,) it was agreed that certain entries made by you at the custom house, of an article similar to that seized in this case, should be considered as part of the evidence, and go up in the transcript to the Supreme Court, and it was understood that you were to furnish me with copies of *the* these entries. I have applied, sir, several times, to your counsel for these copies, and he informs me that he has requested you to furnish them, but you have not done so. The collector is anxious that the transcript should go up to the Supreme Court as soon as possible, and the object of this is to inform you that, if the entries are not furnished immediately, the transcript will be sent up without them.

I am, respectfully,
Your obedient servant,
F. W. LEA.

Mr. N. GOODALE, present.

I delivered this day to N. Goodale the original of which the above is a true copy.

N. S. MUNGER, *D. M.*

December 27th, 1832.

And on the 11th day of December, 1832, after an examination of this case upon all the foregoing testimony, and the arguments of counsel, the following final decree was entered by order of court, on record, to wit:

TUESDAY, *December 11th*, 1832.

The court met pursuant to adjournment.

Present—Hon. SAM'L H. HARPER.

THE UNITED STATES, vs. 112 CASKS OF SUGAR } No. 3,083.

The court having maturely considered this case, doth now adjudge, order, and decree, that the libel be dismissed, and that the property seized be restored to the claimant, on his paying 15 per cent. *ad valorem* on it; and it is further ordered that probable cause of seizure be certified of record.

The following is the opinion of his honor S. H. Harper, judge of the court of the United States for the eastern district of Louisiana, delivered at the time of the rendition of the foregoing final decree, and filed among the other papers of this cause, to wit:

THE UNITED STATES, vs. 112 CASKS OF SUGAR. } *N. Goodale, claimant.*

It is admitted on the record, that the claimant in this case has an establishment at Matanzas, for the purpose of reducing clayed sugars, both white and brown, to a liquid state, by boiling them in water; and that this is done with the view of importing that liquid into New Orleans, not to be sold as an article of merchandise, but to be there refined by the claimant. It appears that the claimant had previously imported two or three cargoes of a similar article, which he entered as sirup, and on which he paid an *ad valorem* duty of 15 per cent., as an article not enumerated in the tariff laws. The collector, acting under the opinion of the district attorney, which was, that, "although he considered the importation as an evasion of the law, and in violation of its spirit, yet he did not think it could be remedied in any other way than by legislative action, and that a libel for forfeiture could not be sustained." But, upon further inquiry as to the mode of preparing the article, he changed his opinion, and advised the collector to make this seizure, which was accordingly done, and the thing is now prosecuted as forfeited to the U. S., in virtue of the 67th sec. of the act of 1799, and the 4th section of the act 28th May, 1830, on the allegation of a false entry, made with the intent of defrauding the U. S. The libel charges that the article invoiced and entered as sirup, is sugar in a partial state of solution in water, and as such is liable to pay a specific duty of 3 and 4 cents per pound. That the casks contain goods not described in the invoice, and that the same contains a false designation of the article, and was made with the intent to evade

and defraud the revenue of the U. S. To this libel the claimant responded on oath, by denying that the said casks differ from the entry, or that they contain sugar, or that he has been guilty of any fraud. The chief question for my decision, is, whether the article seized differs from its description in the invoice and entry of it. This is a question of fact, and must be determined by the evidence. All laws imposing penalties or working forfeitures are penal laws, and, as such, in conformity with a well known principle of law, must be construed *stricti juris;* and these, which I am now to examine, are of that class. Until the passage of the law of this year, the tariff acts nowhere mention sirup, but impose a duty on sugars; but, before that can be demanded, the article must appear to be sugar in the commercial sense of the term. This distinction between commercial and scientific meaning of terms was taken and maintained by the Supreme Court of the U. S. in the case of a quantity of tea, reported 9th Wheaton, page 436, and has lately been recognized (according to newspaper reports) by the Supreme Court of New York in the case of Lason vs. Swartwout, and Grennel and others vs. same, especially in the latter case. In the case before me, both parties examined a number of commercial men as witnesses, and each party called a scientific witness, to determine the nature of the article in controversy, and to give it the proper name. According to the decisions just cited, and especially that of the S. Court, if there be any variance between the opinions of scientific men and merchants, I shall be bound to reject those of the former, and adopt the latter. But I can perceive no material difference of opinion between them; all the commercial men on both sides concur in saying that they would not purchase the article as sugar, and most of them, without qualification, pronounce it sirup. The Spanish apothecary and chemist who was examined on the part of the U. S., and Mr. George on the part of the claimant, who has been engaged in the business of refining sugar for 20 years, both say that sirup is the result of sugar boiled in water until the sugar is completely dissolved. The former witness, it is true, is of opinion that, in this instance, the sugar has not been completely dissolved, while the latter is of a contrary opinion, and gives for reasons the largeness of the crystals formed, and the fact of its having fermented. What the former witness calls sugar, being the *residuum* after evaporation, the latter denominates the *settlings of sirup*. He says also, that, to restore the article in question to its original state of dry sugar, it would be necessary to carry it through the same process required for making sugar from the cane juice. He further says, that boiling sugar in water destroys the grain, which is an essential characteristic of sugar; therefore, so long as it remains in an ungranulated state, it is not sugar, as expressed in common parlance. If this be true, (and no other witness has contradicted him on these points,) it follows that it is not sugar, in the common sense of the term, in its present state. Now, that was its state when it was entered at the custom-house, and according to the definition of sugar just given, to have entered it by that name would have been a misnomer. Taking all the testimony together, it does not appear to me to sustain the libel, under the 67th sec. of the act 1799. But the attorney of the U. S. contends that the act of May, 1830, embraces the case, which declares that, "if any invoice be made up with intent, by a false valuation or extension, or otherwise, to evade or defraud the revenue, the same shall be forfeited," To bring a case within this act, it must still be shown that the party has made a false entry; in other words, that he has called his merchandise by a wrong name, with a

view to defraud; for, if he has not, whatever advantage may accrue to him, he is not legally guilty. Suppose our laws prohibited, under pain of forfeiture, the introduction of English guineas, but not gold in mass; and suppose an individual, with intent to evade the law, should, previous to importing them, put them in a crucible, and efface the stamps or inscriptions, so that they would not pass current as guineas, and in that state enter them as gold in mass, would they be subject to forfeiture under a law prohibiting the introduction of guineas *eo nomine?* I apprehend not; yet the gold would be susceptible of being re-constructed into guineas. So, here, all the witnesses testify, that although the contents of these casks may be made into sugar, yet in their present state they would not pass as such. This reasoning seems to be fully sustained by what the superior court of New York said in the case of Lason vs. Swartwout. Speaking of the revenue laws, the court says: "By one of these laws, the duty on bar iron made wholly or in part by rolling, is $37 per ton. The same law affixes a specific duty to a large number of articles of iron ware, by name; but as it was hardly possible for Congress to make a complete list, a sweeping clause was added, by which all other articles manufactured from iron were subject to a duty of 25 per cent. *ad valorem*, making it decidedly the *interest* of the *dealer* in iron to convert it into manufactured articles previous to importation. If he chooses, he has a *right* to do this, *without a question as to his motives or intentions.*"

It is understood that Judge Story has lately decided, in his circuit, that lump sugar, afterwards crushed or powdered, and entered under the latter denomination, is not subject to the higher duty on lump sugar. This decision, it is admitted, goes the whole length of this case; and, if founded in law, is decisive of it. If such judgment has been pronounced, it must have been given on the ground (which I hold to be sound doctrine) that the words of the statute, in such cases as this, must be strictly followed; and, although the intention of the party might have been to evade the payment of the higher duty, yet, as there was no discrepancy between the entry of the article and the actual appearance of it, no forfeiture *could* attach. That was a much stronger case than this; for there the quality of the sugar was not injured, while here, it is in evidence, boiling sugar in water deteriorates it, and lessens its value. The law makes no difference between an article imported for sale, and one intended to be used by the importer; nor is it material whether it was ever known in commerce before or not: the questions can only be, what is it? and has it been entered by the proper name? In this case the evidence is, that this is sugar boiled in water, which most of the witnesses say constitutes sirup, and that, in commercial language, it can be called by no other name. To disregard their testimony, would be to set up myself as a judge of the article, which I profess not to be. After much anxious thought on this subject, and after weighing the testimony in the case, I can come to no other conclusion, than that, as it respects the composition of the material contained in these casks, there is a *casus omissus* in the laws under which this libel was instituted, and that, therefore, the thing seized must be treated as a non enumerated article, subject to an ad valorem duty only. The counsel for the claimant contended that such was the opinion of the last Congress when they legislated on this subject, inasmuch as they expressly provided for such cases. Under ordinary circumstances such conclusion would not be fairly inferrible; for, as was pertinently said by the district attorney, "we all know that Congress, out of abundant caution, fre-

quently insert clauses which might with propriety be omitted, without affecting the true construction of the law in which they are employed; but, as it is a matter of notoriety that the act of the last Congress, specifying this article, grew out of this very seizure, and was made expressly to meet similar cases in future, the conclusion is almost irresistible, that they thought their former laws were defective in this respect; otherwise, instead of enacting *a new law* on the subject, they would have passed an explanatory act of the old law, to remove all doubt respecting its construction." How far an American citizen, who is presumed to assist in making all the laws of the land which so anxiously protect his rights, is reprehensible in taking advantage of casual omissions in them, to benefit himself at the expense of a whole State, is not a question for me to settle in my judicial capacity; but, as a citizen of Louisiana, in which all my interests are concentered, were I permitted to *to* exercise legislative as well as judicial functions, or could I permit my feelings as a man to control my opinions as a judge, or to be influenced by the seductions of popularity, I would make a very different decision. But if Congress had left this sugar-growing State to the mercy of such speculations as this, still my sense of duty, as an expounder of the law as I find it, would have led me to the same conclusion at which I have arrived. The responsibility, however, of an erroneous decision is much lessened by the reflection that the proper branch of the Government has put a decided *veto* on similar transactions, so that the prosperity of this State will not, in future, be injured by them; and I derive equal satisfaction from the knowledge that, if I have mistaken the law of this case, the error can be corrected by the highest tribunal of the nation.

It is therefore adjudged, ordered, and decreed, that the libel in this case be dismissed, and that the property seized be restored to the claimant, on his paying fifteen per cent. *ad valorem* on it.

And afterwards, to wit, on the 12th day of December, 1832, and after the rendition of the decree in this case, the United States, by their attorney, filed the following petition for an appeal from the said decree, to wit:

To the Hon. Samuel H. Harper, of the district court of the United States, for the eastern district of Louisiana.

John Slidell, district attorney of the United States for the eastern district of Louisiana, respectfully represents to the court, that the United States are dissatisfied with a certain final decree rendered this day by your honor, in a certain case of admiralty jurisdiction, entitled the United States *vs.* 112 Casks Sugar, and that the matter in dispute, in said case, exceeds the sum of two thousand dollars. The attorney aforesaid, on the behalf aforesaid, prays that an appeal from said final decree to the Supreme Court of the United States may be allowed, and that until the final decision of the said Supreme Court of the United States be had in the aforesaid cause, all further proceedings therein may be suspended.

JOHN SLIDELL, *District Attorney.*

Be it so.

SAML. H. HARPER, *Judge United States.*

Eastern District of Louisiana, *ss.*

To Nathan Goodale, claimant of 112 casks sugar, libelled by the United States.

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at Washington City, on the second Monday in August, 1833, pursuant to an appeal lodged in the clerk's office of the district court of the United States for the eastern district of Louisiana, wherein the United States are appellants, and you are appellee, to show cause, if any there be, why the decree, as in said petition of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand, this 22d day of December, 1832.

SAMUEL H. HARPER,
Judge U. S. for Louisiana.

1832, December 24th. Executed on the abovenamed Nathan Goodale, by delivering to him a certified copy of the above citation, and also a certified copy of the petition for the appeal in the above case.

L. C. BACON, *Deputy Marshal.*

EASTERN DISTRICT OF LOUISIANA, *ss.*

I, Byrd B. Waller, deputy clerk of the eastern district of Louisiana, do hereby certify that the foregoing fifty pages contain a full and perfect transcript of the record and process, together with all things relating thereunto, now on file in the clerk's office of the said court, in the case wherein the United States are libellants of 112 casks sugar, and N. Goodale is claimant of the same.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at the city of New Orleans, this 5th day [L. S.] of January, 1833, and in the 57th year of the independence of the United States.

B. B. WALLER,
Dep. Clerk East. Dist. of Louisiana.

UNITED STATES OF AMERICA, *ss.*

I, Samuel H. Harper, judge of the district court of the United States for the State of Louisiana, do hereby certify that Byrd B. Waller, deputy clerk of the district court of the United States for the eastern district of Louisiana, is now, and was at the time of signing the foregoing transcript, deputy clerk of said court, and that, to his official attestations as such, full faith and credit are due; and further, that the said certificate and attestation to the same are in due form.

In testimony whereof *of*, I have hereunto subscribed my name, this 5th January, 1833.

SAMUEL H. HARPER,
Judge U. S. for Louisiana.

Mr. Sergeant Turns on the rules of equity practice
60 & 120 published in 21. Demurrer over ruled.
By no rule no other demurrer or plea to be received
and so much of the bill as is demurred to shall
be taken for confessed. At this time there was
a final decree. No answer says it was not
necessary.
Does not admit that the circuit court has
a right to vary the rules by its practice.